

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE,)	
)	
Plaintiff,)	
)	
v.)	No. _____
)	
SHEVIN GOODMAN, individually, and)	
formerly doing business as U.S. PAYPHONE)	
DISTRIBUTORS, INC., a dissolved foreign)	
corporation,)	
)	
Respondent.)	

ASSURANCE OF VOLUNTARY COMPLIANCE

THIS ASSURANCE OF VOLUNTARY COMPLIANCE (“Assurance”) is given by SHEVIN GOODMAN, individually and formerly doing business as U.S. Payphone Distributors, Inc, a dissolved foreign corporation formerly located in North Miami, Florida (“Respondent”), to PAUL G. SUMMERS, Attorney General and Reporter for the State of Tennessee (“Attorney General”) on behalf of DAVID A. MCCOLLUM, the Director of the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance (“Division”).

WITNESSETH:

Some of the facts and circumstances surrounding the execution of this Assurance are as follows:

A. The Division and the Attorney General conducted an investigation of specific business practices of Respondent. Respondent was the primary owner of U.S. Payphone Distributors, Inc., a dissolved foreign corporation. U.S. Payphone Distributors, Inc., through its officers, directors and employees, was engaged in various conduct in violation of the Tennessee Consumer Protection Act of 1977 as described in the State’s Complaint styled *State of Tennessee v. U.S. Payphone Distributors, Inc., a dissolved foreign corporation et al.*, Davidson County Chancery Court, No. 99-3474-I. Respondent Shevin Goodman was in a corporate and fiduciary position to correct or stop the practices identified in the State’s Complaint. Respondent has agreed to enter into this Assurance to

demonstrate to the State that he will use his best efforts to insure that the problems at the aforementioned business opportunity company have been corrected and will not reoccur.

Respondent's business practices are more fully described in the State's Petition and State's Complaint.

As a result of the investigation, the Division and the Attorney General determined that certain acts and practices of Respondent, through U.S. Payphone Distributors, Inc., violated the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, *et seq.* (the "Act").

B. Respondent denies any wrongdoing. Further, pursuant to Tenn. Code Ann. § 47-18-107(c), acceptance of this Assurance by Respondent shall not be considered an admission of a prior violation of the Act.

C. Therefore, pursuant to Tenn. Code Ann. § 47-18-107, Respondent desires to give this Assurance, and the Attorney General desires to accept it, in order to avoid the expense of litigation.

NOW, THEREFORE, acting pursuant to Tenn. Code Ann. § 47-18-107, Respondent gives, and the Attorney General accepts, the following assurances:

1. DEFINITIONS

As used in this Assurance and accompanying Agreed Order, the following words or terms shall have the following meanings:

- 1.1 "Assurance of Voluntary Compliance", "Assurance" or "Order" shall refer to this document entitled Assurance of Voluntary Compliance in the matter of *State of Tennessee v. Shevin Goodman, individually and formerly doing business as U.S. Payphone Distributors, Inc., a dissolved foreign corporation.*
- 1.2 "Agreed Final Judgment", "Judgment" or "Order" shall refer to this document entitled Agreed Final Judgment with U.S. Payphone Distributors, Inc. in the matter of *State of Tennessee v. U.S. Payphones Distributors, Inc., a foreign corporation, and Shevin Goodman, doing business as U.S. Payphones, Distributors, Inc.*
- 1.3 "Consumer" means any person, a natural person, individual, governmental agency or entity, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized.
- 1.4 "Division" or "Division of Consumer Affairs" shall refer to the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance.
- 1.5 "FTC Franchise Rule" shall refer to the Federal Trade Commission Rules regarding business opportunities and franchises found at 16 C.F.R. 3436.1 *et seq.*
- 1.6 "Respondent" shall refer to Shevin Goodman, individually and formerly doing business as U.S. Payphone Distributors, Inc., and/or any and all officers, owners, employees, agents and representatives of Shevin Goodman.

- 1.7 “Petitioner”, “State of Tennessee”, “State” or “Attorney General” shall refer to the Office of the Tennessee Attorney General and Reporter.
- 1.8 “Tennessee Consumer Protection Act” or “Consumer Act” shall refer to the Tennessee Consumer Protection Act of 1977 and related statutes found at Tenn. Code Ann. §§ 47-18-101, *et seq.*

2. JURISDICTION

2.1 Upon approval of this Court, the parties agree that this matter should be assigned to Division I of the Chancery Court, because it has matters substantially connected to the *State of Tennessee v. U.S. Payphone Distributors, Inc., a dissolved foreign corporation and Shevin Goodman et al.*, No. 99-3474-I assigned to that Part.

2.2 Jurisdiction of this Court over the subject matter herein and over the person of the Respondent for the purposes of entering into and enforcing this Assurance and Agreed Order is admitted. Jurisdiction is retained by this Court for the purpose of enabling the State to apply such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Assurance and Agreed Order, including enforcement of compliance therewith and assessment of penalties for violation(s) thereof. Respondent agrees to pay all court costs and attorneys’ fees and any costs associated with any successful petitions to enforce any provision of this Assurance and Agreed Order against Respondent.

3. VENUE

3.1 Pursuant to Tenn. Code Ann. § 47-18-107, venue as to all matters between the parties relating hereto or arising out of this Assurance is solely in the Chancery Court of Davidson County, Tennessee.

4. PERMANENT INJUNCTION

Accordingly, it is hereby agreed that upon approval of the Court, Respondent Shevin Goodman shall be permanently and forever enjoined and bound from engaging in the practices set forth herein:

4.1 Respondent shall be prohibited from directly or indirectly engaging in any unfair or deceptive acts or practices in the conduct business. Respondent further shall fully abide by all provisions of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, *et*

seq., including but not limited to §§ 47-18-104(a), (b)(5) and (b)(27), which prohibit unfair and deceptive acts and practices.

4.2 Respondent shall fully comply with all provisions of the FTC Franchise Rule, 16 C.F.R. § 436.1, *et seq.*

4.3 Respondent shall be prohibited from, directly or indirectly, providing information, estimates, approximations and/or representations regarding the potential income and/or earnings, which may result from the purchase, ownership and/or operation of Respondent's business opportunity or franchise without complete and accurate substantiation for each such claim at the time such claims are made. Complete and accurate information, in the context of this paragraph, refers to at a minimum the information required by the FTC Franchise Rule. Respondent shall be prohibited from directly or indirectly representing to consumers that consumers are guaranteed a certain income if they participate in Respondent's business or franchise.

4.4 Respondent shall be prohibited from directly or indirectly representing to consumers that Respondent's business opportunity or franchise is limited to a certain number of people, if such is not the case.

4.5 Respondent shall be prohibited from directly or indirectly representing that goods or services have characteristics, ingredients, uses or benefits that they do not have.

4.6 Respondent shall be prohibited from directly or indirectly failing to fully comply with the Federal Trade Commission Free guidelines.

4.7 When offering a prize, gift, award or incentive promotion, Respondent shall be prohibited from directly or indirectly failing to fully comply Tenn. Code Ann. § 47-18-120 and § 47-18-124.

4.8 Respondent shall review any employee's record if Respondent receives two or more complaints or other reliable information indicating that an employee has made any misrepresentation to a consumer, or otherwise violated any provision of this Assurance. Respondent shall promptly discipline employees for such employee misconduct and review all purchases of franchise or business opportunities involving that employee to ensure that no violations of this Judgment Assurance occurred.

Further Respondent shall report any such findings to the Attorney General within ten days of discovery if the conduct occurred within the State of Tennessee or involved a Tennessee consumer.

4.9 In the event the Respondent has employees or representatives, Respondent shall conduct and provide a written training manual regarding the Act and where applicable the Franchise Rule to all of Respondent's employees and/or representatives who are responsible for and/or involved with the selling and/or promoting of franchise and/or business opportunities in Tennessee. The training manual shall include information designed to educate all such employees about the requirements of the Tennessee Consumer Protection Act and, where applicable, the Franchise Rule, including, but not limited to, the obligation to provide full and complete disclosure in accordance with the Tennessee Consumer Protection Act to interested consumers. These training sessions shall also include information regarding Respondent's policy prohibiting unsubstantiated earnings claims during conversations with interested consumers. In the event the Respondent has employees or representatives, within sixty (60) days of execution of this Judgment Assurance, Respondent shall provide to the Attorney General a copy of the training manual provided to employees and an affidavit stating and certifying that the manual has been provided to all employees responsible for and/or involved in the selling or promoting of franchises and/or business opportunities to consumers in Tennessee along with a copy of Respondent's procedure for ensuring that all new employees receive the training manual in the future prior to engaging in sales activities on behalf of the Respondent.

5. RESTITUTION REPRESENTATION OF RESPONDENT SHEVIN GOODMAN

5.1 Respondent Shevin Goodman represents and warrants that he is unaware of U.S. Payphone Distributor, Inc. having sold any business opportunities, goods or services to Tennessee consumers and accordingly, Respondent Shevin Goodman represents and warrants that no Tennessee consumer is due any restitution. Shevin Goodman has provided an affidavit to the State of Tennessee regarding this information. If these representations are incorrect or inaccurate, Respondent shall pay to any Tennessee consumer that is later identified as having purchased a business opportunity from U.S. Payphone Distributors, Inc., a full refund of all monies paid by said consumer including taxes and other charges within ten (10) days of a request. Proof of payment in the form of a canceled check is to be provided to the Attorney General within thirty (30) days of each payment.

6. PAYMENT OF ATTORNEYS' FEES AND COSTS TO THE STATE

6.1 The Corporate Defendant U.S. Payphone Distributors, Inc. shall, on behalf of the Respondent, pay the sum of One Thousand and 00/100 Dollars (\$1,000.00) to the State of Tennessee for attorneys' fees and costs of investigation, prosecution and monitoring for compliance of this matter, which may be used for consumer protection purposes at the sole discretion of the Attorney General. Said payment is considered in addition to any and all sums paid by the Corporate Defendant in the matter of *State of Tennessee v. U.S. Payphone Distributors, Inc. et al.*, Davidson County Chancery Court, No. 99-3474-I, and shall be made by providing the Attorney General or his designated representative a cashier's or certified check made payable to the "State of Tennessee - Attorney General" on the day of execution of this Assurance.

7. CIVIL PENALTIES

7.1 The Corporate Defendant U.S. Payphone Distributors, Inc. shall, on behalf of the Respondent, pay the sum of One Thousand and 00/100 Dollars (\$1,000.00) as a civil penalty for violations pursuant to Tenn. Code Ann. § 47-18-108(b)(3). Said payment is considered in addition to any and all sums paid by the Corporate Defendant in the matter of *State of Tennessee v. U.S. Payphone Distributors, Inc. et al.*, Davidson County Chancery Court, No. 99-3474-I.

8. CONSUMER EDUCATION

8.1 The Corporate Defendant U.S. Payphone Distributors, Inc. shall, on behalf of the Respondent, pay the sum of Five Hundred Dollars (\$500.00) to fund a consumer education project selected at the sole discretion of the Director of the Division of Consumer Affairs. Said payment is considered in addition to any and all sums paid by the Corporate Defendant in the matter of *State of Tennessee v. U.S. Payphone Distributors, Inc. et al.*, Davidson County Chancery Court, No. 99-3474-I.

9. MONITORING AND COMPLIANCE

9.1 Upon request, Respondent agrees to provide books, records and documents to the State at any reasonable time during normal business hours, and further, to informally or formally under oath provide testimony and other information to the State relating to compliance with this Assurance. In the event Respondent does not have books, records and documents, written confirmation of this fact

should be supplied to the State in response to the State's request. Respondent shall make any requested information available within one (1) week of the request at the Office of the Attorney General or at any other location within the State of Tennessee that is mutually agreeable in writing to Respondent and the Attorney General. This section shall in no way limit the State's right to obtain documents, information, or testimony pursuant to any federal or state law, regulation, or rule.

9.2 The State of Tennessee has the right to test shop Respondent for the purpose of confirming compliance with this Assurance and state law. The test shoppers are not required to disclose that they are representatives of the State of Tennessee when making contact with Respondent. Further, the State of Tennessee may record any or all aspects of its visit(s) to Respondent in audio or video form without notice to Respondent. The Respondent agrees to void any sale that is commenced by a test shopper at the conclusion of the sale upon notification that it was test shopping conducted by the State.

10. PRIVATE RIGHT OF ACTION

10.1 Pursuant to Tenn. Code Ann. § 47-18-109 and 47-18-108(e), nothing in this Assurance shall be construed to affect any private right of action that a consumer or any other person may hold against Respondent.

11. PENALTY FOR FAILURE TO COMPLY

11.1 Respondent understands that upon execution and filing of this Assurance, any subsequent failure to comply with the terms hereof is *prima facie* evidence of a violation of the Tennessee Consumer Protection Act.

11.2 Respondent understands that any knowing violation of the terms of this Assurance shall be punishable by civil penalties of not more than One Thousand Dollars (\$1,000.00) for each violation, in addition to any other appropriate penalties and sanctions, including but not limited to contempt sanctions and the imposition of attorneys' fees and civil penalties. Respondent agrees to pay all court costs and attorneys' fees associated with any petitions to enforce this Assurance and Order against the Respondent.

12. REPRESENTATIONS AND WARRANTIES

12.1 Respondent represents and warrants that the execution and delivery of this Assurance is a free and voluntary act, that this Assurance is the result of good faith negotiations, and that Respondent agrees that the Assurance and terms hereof are fair and reasonable. The parties warrant that they will implement the terms of this Assurance in good faith. Further, no offer, agreements, or inducements of any nature whatsoever have been made to the Respondent by the State of Tennessee, its attorney or any employee of the Attorney General's Office or the Division of Consumer Affairs to procure this Assurance.

12.2 Respondent represents that signatories to this Assurance have authority to act for and bind the Respondent.

12.3 Respondent shall not participate, directly or indirectly, in any activity to form a separate entity or corporation for the purpose of engaging in acts prohibited in this Assurance or for any other purpose which would otherwise circumvent any part of this Assurance or the spirit or purposes of this Assurance.

12.4 Neither Respondent nor anyone acting on his behalf shall state or imply or cause to be stated or implied that the Attorney General, the Division of Consumer Affairs, the Department of Commerce and Insurance, or any other governmental unit of the State of Tennessee approved, sanctioned, or authorized any practice, act, or conduct of the Respondent.

12.5 Acceptance of this Assurance by the State shall not be deemed approval by the State of any of Respondent's advertising or other business practices.

12.6 Within thirty (30) days of the entry of this Assurance, Respondent shall submit a copy of this Assurance to each of his officers, directors, employees and any third parties who act directly or indirectly on behalf of the Respondent as an agent, independent contractor or who are involved in conducting Respondent's business in Tennessee. Within forty-five (45) days of entry of this Assurance, Respondent shall provide the State with an affidavit verifying and certifying that all required persons have been supplied with a copy of this Assurance. In the event no such "required persons" exist, Respondent shall provide the State with an affidavit verifying and certifying this fact.

12.7 Respondent warrants and represents that he is the proper party to this Assurance and Order. Respondent further acknowledges that the State expressly relies upon this representation and

warranty, and that if it is false, misleading, deceptive, unfair or inaccurate, the State has the right to move to vacate or set aside this Assurance and Agreed Order, and request that Respondent be held in contempt, if the State so elects.

12.8 Shevin Goodman represents that is the true legal name of the person entering into this Assurance of Voluntary Compliance and Agreed Order. Respondent understands that the State expressly relies upon this representation and if this representation is false, unfair, deceptive, inaccurate or misleading, the State shall have the right to move to vacate or set aside this Assurance and Agreed Order, and request that Respondent be held in contempt, if the State so elects.

12.9 This Assurance and Agreed Order may only be enforced by the parties hereto.

12.10 The titles and headers to each section of this Assurance are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Assurance.

12.11 This document shall not be construed against the “drafter” because both parties participated in the drafting of this document.

12.12 This Assurance and the Agreed Final Judgment entered into with U.S. Payphone Distributors, Inc. constitute the complete agreement of the parties with regard to the resolution of the matters set forth in the State’s Petition and Complaint. The Assurance and Judgment are limited to resolving only matters set forth in the State’s Complaint and Petition.

12.13 Nothing in this Assurance shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State of Tennessee. In addition, this Assurance shall not bar the State, a District Attorney General, or other governmental entity from enforcing laws, regulations or rules against Respondent, including those relating to the same facts giving rise to this Assurance. By entering into this Assurance, Respondent settles the civil claims asserted by the State as described in the State’s Petition and in the Complaint filed in State of Tennessee v. U.S. Payphones, Inc., et. al, Civil Action No. 99-3474-I, Chancery Court, Davidson County, Tennessee.

12.14 This Assurance shall be binding and effective against Respondent upon Respondent’s execution of the Assurance. In the event the court does not approve this Assurance, this Assurance Judgment shall be of no force and effect against the parties State of Tennessee.

12.15 Respondent has been advised of his right to legal counsel in connection with this matter. If any Respondent declines to obtain the assistance of legal counsel, that Respondent has expressly waived his right to counsel by executing this Assurance.

12.16 Nothing in this Assurance constitutes an agreement by the State of Tennessee concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the Internal Revenue Code or any state tax laws.

12.17 Respondent waives and will not assert any defenses Respondent may have to any criminal prosecution or administrative action relating to the conduct described in the State's Petition, which defenses may be based, in whole or in part, on the Double Jeopardy or Excessive Fines Clauses of the Constitution or principles set forth in *Hudson v. United States*, 118 S. Ct. 488 (1997), and *Austin v. United States*, 509 U.S. 602 (1993), and agrees that the amount that Respondent has agreed to pay under the terms of this Assurance is not punitive in effect or nature for purposes of such criminal prosecution or administrative action.

13. COMPLIANCE WITH ALL LAWS, REGULATIONS AND RULES

13.1 Nothing in this Assurance and Order shall be construed as relieving Respondent of the obligation to comply with all state or federal laws, regulations or rules.

14. FILING OF ASSURANCE

14.1 Upon the execution of this Assurance, the Attorney General shall prepare and file in the Chancery Court for Davidson County a Petition, Agreed Order and this Assurance for the Court's approval. Respondent hereby waives any and all rights which he may have to be heard in connection with judicial proceedings upon the Petition. Respondent agrees to pay all costs of filing such Petition, Assurance and Agreed Order. Simultaneously with the execution of this Assurance, Respondent shall execute an Agreed Order. This Assurance is made a part of and is incorporated into the Agreed Order. The Respondent agrees that he consents to the entry of this Assurance and Agreed Order without further notice.

15. APPLICABILITY OF ASSURANCE TO RESPONDENT AND HIS SUCCESSORS

15.1 Respondent agrees that the duties, responsibilities, burdens and obligations undertaken in connection with this Assurance shall apply to him, each of his officers, directors, managers, agents, assigns, representatives, employees, partners, subsidiaries, affiliates, parents, related entities, joint venturers, persons or other entities he controls, manages or operates, his successors and assigns, and to other persons or entities acting directly or indirectly on his or their behalf.

16. NOTIFICATION TO STATE

16.1 Any notices required to be sent to the State or the Respondent by this Assurance shall be sent by United States mail, certified mail return receipt requested or other nationally recognized courier service that provides for tracking services and identification of the person signing for the document. The documents shall be sent to the following addresses:

For the State:
Deputy Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, Tennessee 37202
(615) 741-6422

For the Respondent:
Shevin Goodman

Telephone no.: _____

16.2 For five (5) years following execution of this Assurance, Respondent shall notify the Office of the Attorney General, in writing, at least thirty (30) days prior to the effective date of any proposed changes in corporate structure, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or firm, the creation or dissolution or subsidiaries, or any other changes in Respondent's status that may affect compliance with obligations arising out of this Assurance.

17. COURT COSTS

17.1 All costs associated with the filing and distribution of this Assurance and any other incidental costs or expenses incurred thereby shall be borne by Respondent. No costs shall be taxed against the State as provided by Tenn. Code Ann. § 47-18-116. Further, no discretionary costs shall be taxed to the State.

FOR THE STATE OF TENNESSEE:

PAUL G. SUMMERS
Attorney General & Reporter
B.P.R. No. 6285

TIMOTHY C. PHILLIPS
Assistant Attorney General
B.P.R. No. 12751
Tennessee Attorney General's Office
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, Tennessee 37202
(615)741-3533

Approved by:

DAVID A. MCCOLLUM
DIRECTOR
Division of Consumer Affairs of the
Department of Commerce and Insurance
500 James Robertson Parkway
5th Floor, Davy Crockett Tower
Nashville, TN 37243-0600
(615) 741-4737

FOR RESPONDENT:

PETER G. GRUBER
Counsel of Respondent
B.P.R. No. _____
South Dadeland Boulevard
Suite 9100
Miami, Florida 33156
Telephone: 305-670-1010
Facsimile: 305-670-0228

SHEVIN GOODMAN
Individually

Social security number:_____

Address:_____

Telephone No.: _____

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